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Roldan v 11610 14 Rd. LLC

2022 NY Slip Op 33881(U)

November 7, 2022

Civil Court of the City of New York, Queens County

Docket Number: Index No. L&T 308008/22

Judge: Clinton J. Guthrie

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART C

NANCY ROLDAN,

Petitioners,
against

11610 14 ROAD LLC, ERIC WANG LI, "JOHN
DOE,"

Respondents,

and

NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT (DHPD),
Respondent.

Present:

HON. CLINTON J. GUTHRIE, J.H.C.

PROCEDURAL BACKGROUND & INQUEST

Petitioner filed this HP action by order to show cause seeking correction of violations and for a finding of harassment. The premises are located at 116-10 14 Road, Apt 1R, Queens, New York 11356. On June 27, 2022, this court issued a default order to correct all open DHPD violations of record at the subject premises. The court adjourned petitioner's harassment claims for inquest. Following adjournments, the court conducted an inquest on September 23, 2022. The court held open the record for submission of a post-inquest memorandum by petitioner's attorneys. After the memorandum was filed on October 7, 2022, decision was reserved on the inquest.

At the inquest, petitioner Nancy Roldan testified. Ms. Roldan testified that she had lived at the subject premises for 31 years. She stated that she had a rent-stabilized lease but that it had not been renewed since 2010. She stated that she had raised her children in the subject premises

and that prior to the current owners taking over, the former owners would repair what needed to be fixed. The court took judicial notice of the deed for the subject building on ACRIS (dated May 26, 2017), showing that 11610 14 Road LLC is the most recent deed-holder. The deed also lists Eric Li as member of 11610 14 Road LLC. Ms. Roldan testified that Mr. Li had introduced himself to her as the landlord approximately 7 years before.

The court took judicial notice of the open DHPD violations pursuant to Multiple Dwelling Law § 328(3). Those included numerous “C” (immediately hazardous) violations; multiple “C” violations were place for lack of cold water and hot water. Ms. Roldan testified that she had not had water for over 3 years and was still living without water. She stated that she had called the police about the lack of water but that the issue had not been resolved.

Ms. Roldan also testified that her neighbors all had water and that Mr. Li’s father, who lives above her in Apartment 2R (the “John Doe” named herein), had water in his apartment. Ms. Roldan testified that Mr. Li told her to pay rent to his father.

When asked about other conditions in her apartment, Ms. Roldan testified about a mice infestation (which led to a trip to the hospital from a bite), broken plywood in her kitchen, an infestation of roaches, and her floor caving in. She also described a leak from her apartment, going into the area below. She testified that she had brought the conditions to her landlord’s attention but that no steps had been taken to repair them. She also described her landlord placing garbage underneath her window.

When asked how it was like to live without water for so long, Ms. Roldan testified that not even a dog lives like her. She stated that she would fill up buckets and jugs at a fire hydrant. She had to purchase food and water for cooking and bathing. She had been unable to have any holidays at home with family for 4 years due to her lack of water. Ms. Roldan estimated that she

spent \$60-\$80 on buying water and \$150 per week on additional food costs occasioned by the lack of water.

Ms. Roldan concluded by testifying that none of the violations had been repaired or corrected. She expressed her desire that the water be restored to her apartment.

DISCUSSION & CONCLUSION

The inquest testimony and evidence established that respondents Eric Wang Li and 11610 14 Road LLC engaged in harassment against petitioner in violation of NYC Admin. Code § 27-2005(d). The testimony and evidence established acts and omissions by those respondents that constituted “repeated interruptions [and] discontinuances of essential services” (NYC Admin. Code § 27-2004(a)(48)(ii)(b)) and “repeated failures to correct hazardous [and] immediately hazardous violations of [the Housing Maintenance Code]...within the time required for such corrections” (NYC Admin. Code § 27-2004(a)(48)(ii)(b-2)). Ms. Roldan’s credible testimony described a more than 3-year-long cessation of water to her apartment. She also described other conditions, including mice and roach infestations and defective flooring, that had not been abated. The DHPD website open violations report for the subject premises confirms that numerous hazardous and immediately hazardous violations were issued for these conditions (and others in addition) and were not corrected within the time required for their correction under the Housing Maintenance Code.¹ This court also issued an order to correct all open violations on June 27, 2022 and takes judicial notice of that order.

As the subject premises are contained in a multiple dwelling (the DHPD website shows 6 “A” units) there is a rebuttable presumption that the aforementioned acts of harassment were

¹ The court takes judicial notice of the DHPD website’s open violations report for the subject premises pursuant to Multiple Dwelling Law § 328(3)). *See Dept. of Hous. Preserv. & Dev. v. Knoll*, 120 Misc 2d 813, 814 [App Term, 2d Dept 1983].

intended to cause petitioner to vacate or otherwise surrender or waive her rights. *See* NYC Admin. Code § 27-2004(a)(48)(ii). Since respondents did not appear at the inquest, the presumption of intent was not rebutted.

The court hereby dismisses the harassment claims against “John Doe.” While petitioner testified about Mr. Li’s father, the presumed “John Doe,” petitioner failed to describe any due diligence undertaken to learn of the person’s identity before naming him as “John Doe.” *See Wilmington Trust, N.A. v. Shasho*, 197 AD3d 534, 536 [2d Dept 2021]. Accordingly, the misuse of CPLR § 1024 results in dismissal as against “John Doe” only. *See Bumpus v. New York City Tr. Auth.*, 66 AD3d 26, 30-31 [2d Dept 2009]. To the extent that the court issued the June 27, 2022 order to correct against “John Doe,” that portion of the order is recalled and vacated. The default order to correct otherwise remains in full effect.

Having determined that Eric Wang Li and 11610 14 Road LLC engaged in harassment against petitioner under the Housing Maintenance Code, the court hereby ORDERS the following relief pursuant to NYC Admin. Code §§ 27-2115(m) and § 27-2115(o):

(A) The court finds that a class “C” violation existed as a result of the harassment and that such violation existed at the time that this action was commenced (June 6, 2022);

(B) The court restrains Eric Wang Li and 11610 14 Road LLC from violating NYC Admin. Code §§ 27-2005(d) and 27-2004(a)(48), and they are directed to ensure that no further violation occurs;

(C) The court imposes a civil penalty against Eric Wang Li and 11610 14 Road LLC in the amount of \$10,000.00, which shall be subject to a judgment in favor of DHPD;

(D) The court awards statutory compensatory damages in the amount of \$1,000.00 to petitioner, which shall be subject to a judgment in favor of petitioner and against Eric Wang Li

and 11610 14 Road LLC. While petitioner seeks compensatory damages for the water and additional food costs that she testified about at the inquest, there was no proof of the amounts expended or even specificity about where the water and food was purchased and at what specific prices. As a result, the court is unable to make a finding that the estimates to which petitioner testified reflect the losses “with reasonable certainty.” See *E.J. Brooks Co. v. Cambridge Sec. Seals*, 31 NY3d 441, 449-450 [2018]; *Roach v. 215 Sterling LLC*, 74 Misc 3d 1221[A], 2022 NY Slip Op 50193[U] [Civ Ct, Kings County 2022, Stoller, J.] [In the absence of proof, only statutory compensatory damages imposed upon a finding of harassment]. Accordingly, the statutory amount is imposed;

(E) The court awards statutory punitive damages in the amount of \$9,000.00 to petitioner, which shall be subject to a judgment in favor of petitioner and against Eric Wang Li and 11610 14 Road LLC. The inquest testimony and evidence documented flagrant acts clearly “actuated by evil and reprehensible motives,” insofar as respondents’ actions and omissions left petitioner and her family to live in an inhumane manner without water in their apartment for over 3 years, and subjected petitioner and her family to live with numerous other immediately hazardous and hazardous conditions. *Walker v. Sheldon*, 10 NY2d 401, 404 [1961]. As the United States Court of Appeals for the Ninth Circuit recently observed, “[w]ater is essential to life on earth...and it is particularly essential for healthy human societies.” *Navajo Nation v. United States DOI*, 26 F4th 794, 802 [9th Cir 2022]. Moreover, it is undisputed that under the Housing Maintenance Code, running water (hot and cold) is an essential service. See *Cartagena v. Rhodes 2 LLC*, 2020 Slip Op 30290[U] [Sup Ct, NY County 2020]; *Hibbert v. Powell*, 2021 NY Slip Op 31862[U] [Civ Ct, Bronx County 2021]. The imposition of punitive damages here is necessary to deter respondents, “as well as others who might otherwise be so prompted, from indulging in similar


conduct in the future.” *Walker*, 10 NY2d at 404; *see also Leung v. Zi Chang Realty Corp.*, 74 Misc 3d 126[A], 2022 NY Slip Op 50034[U] [App Term, 1st Dept 2022]; *351-359 E. 163rd Street Tenants Assoc. v. East 163 LLC*, 70 Misc 3d 1212[A], 2021 NY Slip Op 50055[U] [Civ Ct, Bronx County 2021]; and

(F) The court will award petitioner reasonable attorneys’ fees, in accordance with NYC Admin. Code § 27-2115(o). The fees hearing will be scheduled for December 7, 2022 at 2:30 PM, in Part C, Room 407, 89-17 Sutphin Boulevard, Jamaica, New York 11435. Any pre-marked exhibits for the fees hearing shall be emailed to the court (qn-housing407@nycourts.gov) or filed to NYSCEF on or before December 5, 2022.

This Decision/Order will be filed to NYSCEF and emailed to the attorneys for DHPD. Petitioner’s attorneys shall serve a copy of this Decision/Order upon Eric Wang Li, 11610 14 Road LLC, and “John Doe” at the respective addresses for them stated in the initial order to show cause by first class mail on or before November 14, 2022. Proof of service shall be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: November 7, 2022
Queens, New York


CLINTON J. GUTHRIE, J.H.C.

SO ORDERED - HON. CLINTON J. GUTHRIE